

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 15838 of the Church of Jesus Christ, pursuant to 11 DCMR 3108.1, for a special exception under Section 205 to establish a child development center of 80 children and eight staff persons in an R-1-B District at premises 3456 Pennsylvania Avenue, S.E. (Square 5528, Lot 814).

HEARING DATES: July 21, September 22, October 13 and
December 1, 1993

DECISION DATES: December 22, 1993 and July 6, 1994

DISPOSITION: The Board GRANTED the application with CONDITIONS by a vote of 4-0 (Craig Ellis, Maybelle Taylor Bennett, George Evans and Angel F. Clarens to grant; Laura M. Richards not voting, having recused herself). The Board APPROVED, in part, a modification of its order by a vote of 4-0 (Angel F. Clarens, Craig Ellis, George Evans and Maybelle Taylor Bennett to approve, in part; Laura M. Richards not voting, having recused herself).

FINAL DATE OF ORDERS: June 3, and July 14, 1994

RECONSIDERATION ORDER

The Board granted the application subject to twelve conditions by its order dated June 3, 1994. Condition Nos. 8, 9 and 10 of the order read as follows:

8. Prior to the issuance of the certificate of occupancy for the use, the applicant shall present to the Zoning Administrator an executed easement demonstrating that the applicant has right-of-way over the triangular portion of the driveway located on Lot 16 in Square 5528.
9. Prior to the issuance of the certificate of occupancy, the applicant shall submit to the Board for its review and approval, a landscaping plan demonstrating its efforts to screen the guardrail along the east side of the Pennsylvania Avenue access, to protect existing trees, and to prevent soil erosion. Prior to the submission of such landscape plan to the Board, the applicant shall seek appropriate review of such plan from the Department of Public Works with respect to the proposed plantings in the public space between the applicant's property and Pennsylvania Avenue.

10. Prior to the issuance of the certificate of occupancy, the applicant shall submit a plan detailing the play area to be used and the type of fencing proposed for the property line along 38th Street for the Board's review and approval. In addition, the applicant shall present the plans for the play area to the D.C. Department of Consumer and Regulatory Affairs to ensure that the proposed space meets the minimum required area per child for the proposed use.

By its order, dated July 14, 1994, the Board modified its original approval by deleting Condition No. 8 of the Board's order dated June 3, 1994 and by accepting, as adequate, plans submitted by the applicant in response to Condition No. 9. With respect to Condition No. 10, the Board concluded that the applicant's submission did not adequately address the Board's concerns.

By letter dated July 14, 1994, the applicant's representative requested expedited reconsideration by the Board of its decision not to approve the applicant's submission with respect to Condition No. 10 of the Board's order dated June 3, 1994. In support of its motion for reconsideration, the applicant's representative argued as follows:

1. The construction of a new, additional fence along the 38th Street property line would create a fenced-in void between the property line and the existing chain link fence. The applicant has received the necessary approvals from the Department of Public Works and the Department of Consumer and Regulatory Affairs for retention of the current fence and the use of the public space to meet the criteria for play area for the proposed child development center. The construction of a fence along the property line would be unnecessarily expensive and would deprive the applicant the use of the larger play area approved by DPW and DCRA for that use.
2. The rectangular void created by building a second fence would be awkward in appearance and would be difficult to maintain.
3. As indicated in the June 16, 1994 submission, the applicant has complied with all relevant laws and regulations with respect to the use of the currently fenced-in space as play area for the child development center.

By correspondence dated July 21, and July 25, 1994, counsel for the Penn-Branch Citizens Civic/Civil Association, a party in opposition to the application, opposed the applicant's request and motion. The Board notes counsel's opposition to the applicant's

request for expedited consideration of its motion. However, the Chairperson of the Board ruled that the matter be scheduled for consideration at the Board's special public meeting of July 29, 1994 prior to submission of the opposition's submission. Therefore, the Board concludes that the issue is moot and declines consideration of the arguments with respect thereto.

With respect to the applicant's motion for reconsideration of the Board's decision not to approve the applicant's submission in response to Condition No. 10 of the Board's order of June 3, 1994, counsel for the opposition argued that Condition No. 10 was adopted by the Board out of consideration for the neighborhood's concern about the noise problems attendant to use of outdoor play space on a daily basis. The opposition was of the opinion that the condition, as stated, represented a compromise and should not be disturbed in order to ensure some modest protection for the neighborhood.

In addition, counsel for the opposition requested the Board to reconsider its decision of July 14, 1994 to delete Condition No. 8 of its original decision dated June 3, 1994. Counsel for the opposition argued that the applicant's submission on which the Board based its decision to delete Condition No. 8 was not properly served on all parties to the application, particularly Mr. Floyd White, the owner of the property which is the subject of the condition in question.

In response to the opposition's submission, the applicant's representative submitted a certificate of service, dated July 25, 1994 which attests that the applicant's motion dated June 16, 1994 was mailed, postage pre-paid to Alberta Paul, President of the Penn-Branch Civic/Civil Association and to ANC 7B, and that copies of the motion were delivered by hand to Mr. Floyd White and Mr. Howard Green, Sr. The Board notes that the applicant failed to serve counsel for the opposition with a copy of the motion. However, all three witnesses for the opposition were individually served. The Board concludes, therefore, that adequate service was provided to all parties to the case.

Based upon consideration of the foregoing motions, responses thereto, the record in the case, and its final orders, the Board concludes, with respect to the motion of the opposition for reconsideration of the Board's decision to delete Condition No. 8 of its order dated June 3, 1994, that the opposition should more properly have filed its opposition to the applicant's motion in a timely manner within ten days of the service of the motion on June 16, 1994. Notwithstanding the timeliness of the opposition's response, the Board concludes that the opposition offered no argument to support the retention of Condition No. 8 nor any

evidence specifically addressing whether the Board erred in deleting said condition. Accordingly, the motion for reconsideration of the Board's decision to delete Condition No. 8 of its order dated June 3, 1994 is hereby **DENIED**.

With respect to the applicant's motion for reconsideration of its decision not to approve the applicant's submission with respect to Condition No. 10 of the Board's order dated June 3, 1994, the Board concludes that it was in error in finding that the proposed site plan was inadequate. The Board concludes that the proposed play area and fence have met the criteria set forth by the D.C. Department of Public Works and Department of Consumer Regulatory Affairs. The Board further concludes that the issue of noise from the play area has been adequately addressed in that outdoor play time will be staggered so that all the children shall not be in the play area at one time; the fencing and landscaping along the north of the property will provide adequate screening of the residences along S Street from the play area; and, the separation of the play area from residences to the east by 38th Street and the existing park would provide an adequate noise screening buffer. Accordingly, it is hereby **ORDERED** that the motion to reconsider the Board's decision with respect to Condition No. 10 of its order dated June 3, 1994 as set forth in its modification order dated July 14, 1994 is hereby **GRANTED**. Condition No. 10 of the Board's June 3, 1994 order, renumbered as Condition No. 9 of the Board's July 14, 1994 order, is hereby amended to read as follows:

9. The location fencing and landscaping of the play area shall be as shown on the site plan marked as Exhibit No. 64A of the record, subject to approval by the D.C. Department of Public Works and the Department of Consumer and Regulatory Affairs.

In all other respects, the orders of the Board dated June 3 and July 14, 1994 shall remain in full force and effect.

DECISION DATE: July 29, 1994

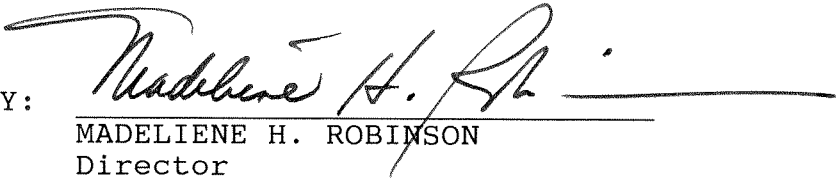
VOTE: 4-1 (The Board **DENIED** the opposition's motion for reconsideration by a vote of 4-0 (Angel F. Clarens, Maybelle Taylor Bennett, George Evans and Craig Ellis to deny; Laura M. Richards not voting, having recused herself)).

VOTE: 3-1 (The Board **GRANTED** the motion of the applicant by a vote of 3-1 (Craig Ellis, Maybelle Taylor Bennett and George Evans to approve; Angel F. Clarens opposed to the motion; Laura M. Richards not voting, having recused herself)).

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BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


MADELIENE H. ROBINSON
Director

FINAL DATE OF ORDER: AUG 10 1994

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENMTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

motion15858/SS/LJP

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 15838

As Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on AUG 10 1994 a copy of the order entered on that date in this matter was mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

John Leslie, Jr., Pastor
6311 13th Street, N.W.
Washington, D.C. 20011


Houston Brown
9403 Loughran Road
Ft. Washington, Maryland 20744

Floyd White
3741 S Street, S.E.
Washington, D.C. 20020

Con Hitchcock
2000 P Street, N.W., #700
Washington, D.C. 20036

Howard Green, Sr.
3737 S Street, S.E.
Washington, D.C. 20020

Herbert Boyd, Jr., Chairperson
Advisory Neighborhood Commission 7-B
3200 S Street, S.E.
Washington, D.C. 20020


MADELIENE H. ROBINSON
Director

DATE: AUG 10 1994

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 15838 of the Church of Jesus Christ, pursuant to 11 DCMR 3108.1, for a special exception under Section 205 to establish a child development center of 80 children and eight staff persons in an R-1-B District at premises 3456 Pennsylvania Avenue, S.E. (Square 5528, Lot 814).

HEARING DATES: July 21, September 22, October 13 and
December 1, 1993
DECISION DATE: December 22, 1993

ORDER

SUMMARY OF EVIDENCE:

1. The property which is the subject of this application is located on the northwest corner of Pennsylvania Avenue and 38th Street S.E. It is known as 3456 Pennsylvania Avenue, S.E. and is zoned R-1-B.

2. The site contains 38,154 square feet of land area, with a frontage of 355 feet along Pennsylvania Avenue to the south and 113.73 feet along 38th Street to the east. The property does not abut a public alley.

3. The subject site is located in an R-1-B District which permits matter of right development of single-family residential uses for detached dwellings with a minimum lot area of 5,000 square feet, a minimum lot width of 50 feet, a maximum lot occupancy of 40 percent, and a maximum height of three stories/40 feet.

4. The site is developed with a large, three-story church building originally constructed in 1956. The applicant, the Church of Jesus Christ, has constructed a three-story addition on the west side of the existing building. The combined square footage of the church and addition is 14,739 square feet.

5. Residences are located behind the site to the north, across 38th Street to the east and to the west of the site. Residences are also located across Pennsylvania Avenue to the south. Located to the northeast of the site is the Fort Davis Park.

6. The applicant is requesting a special exception to establish a day care center at the site. A child development center is permitted in an R-1-B District with Board of Zoning Adjustment approval pursuant to 11 DCMR 205 which provides as follows:

205 CHILD DEVELOPMENT CENTERS (R-1)

- 205.1 Use as a child development center shall be permitted in an R-1 district if approved by the Board of Zoning Adjustment in accordance with the conditions specified in Section 3108 of chapter 31 of this title, subject to the provisions of this section.
- 205.2 The center shall be capable of meeting all applicable code and licensing requirements.
- 205.3 The center shall be located and designed to create no objectionable traffic condition and no unsafe condition for picking up and dropping off children.
- 205.4 The center shall provide sufficient off-street parking spaces to meet the reasonable needs of teachers, other employees, and visitors.
- 205.5 The center, including any outdoor play space provided, shall be located and designed so that there will be no objectionable impacts on adjacent or nearby properties due to noise or activity, or visual or other objectionable conditions.
- 205.6 The Board may require special treatment in the way of design, screening of buildings, planting and parking areas, signs, or other requirements as it shall deem necessary to protect adjacent and nearby properties.
- 205.7 Any off-site play area shall be located so as not to result in endangerment to the individuals in attendance at the center in traveling between the play area and the center itself.
- 205.8 The Board may approve more than one (1) child development center in a square or within one thousand feet (1,000') of another child development center only when the Board finds that the cumulative effect of these facilities will not have an adverse impact on the neighborhood due to traffic, noise operations, or other similar factors.
- 205.9 Before taking final action on an application for use as a child development center, the Board shall submit the application to the D.C. Department of Public Works and Human Services, and the D.C. Office of Planning for review and written reports.

205.10 The referral to the D.C. Department of Human Services shall request advice as to whether the proposed center can meet all licensing requirements set forth in the applicable laws of the District.

7. The applicant maintains that the requirements have been met. The applicant, represented by Houston Brown, testified that the church received a building permit to construct the addition and was later informed that a special exception would be needed to establish the use. He testified that the center will meet all applicable code and licensing requirements. The applicant proposes to use the structure for the day care center as follows:

Lower level	1	1,648 s.f.	47 children
Lower level	1	241 s.f.	5 infants
Lowel level	2	973 s.f.	27 children

The applicant proposes a maximum of 80 children with eight staff. The children will range from infants to 5 years of age. The center will work to strengthen ties between the home and school by working closely with the child, the parents and the schools. It is the goal of the center to provide experiences that will set a firm foundation upon which the children can grow and develop physically, emotionally, socially and intellectually. As the child grows, the program will focus on teaching the child to assume responsibilities and preparing the child for school enrollment and for his or her role as a positive, produtive citizen.

The hours of operation will be Monday through Friday 6:00 a.m. to 6:00 p.m. throughout the year. The tuition is \$75.00 or \$80.00 weekly depending on the age of the child, and includes hot meals. After 6:00 p.m., a late fee will be charged, and children will be automatically placed in after-school care.

Each day, the children will be served a hot, well-balanced breakfast from 8:00 a.m. to 8:45 a.m. Lunch will be served between 11:30 a.m. and 12:30 p.m. The meals will be prepared in the day care center's kitchen.

Outdoor Play Area:

The children will play outdoors daily. The area designated for outdoor play is located to the east on the side of the building and contains 3,767 square feet of space. The play area is partially located at the rear of the property adjacent to the church. This property is used by the church as a parsonage. The entire play area will be fenced. There is a slope located at the northern end of the property. The applicant proposes to fill in this space with dirt. The play area will be landscaped and play

equipment will be installed. The children will use the play area in three shifts of no more than 25 children. Each group will play two hours a day.

Members of the Penn Branch Citizens Civic Association (PBCCA) testified in opposition to the application and expressed some concerns with regard to the play area. The association maintains that the play area is inadequate and fails to meet the minimum space required because of the slope at the rear and the fact there is a sidewalk and driveway on a portion of the designated play area. The association maintains that there is no evidence that the tenant using the house next door to the church has relinquished his right to use the rear yard of the property for parking. If not, this property cannot be considered part of the play area.

The applicant maintains that once the slope is filled in, there will be adequate space for the play area.

Noise:

One neighbor, residing immediately to the rear of the church at 3741 S Street, S.E. testified that he is usually home during the day and he will be disturbed by the noise of children playing on the subject property.

The applicant testified that a six-foot stockade fence will be erected along the rear of the site and along the 38th Street frontage of the site. Trees will be planted along the rear property line to buffer the noise from the playground.

The applicant maintains that the sounds from the playground will be drowned out by the noise of traffic on Pennsylvania Avenue, and nearby residents will become accustomed to the sounds of children playing.

Aesthetics:

The association maintains that the proposed stockade fence is acceptable for the rear yard; however, placing it along 38th Street will be out of character with the neighborhood.

Drop-off/Pick up and Traffic:

The applicant testified that for drop off and pick up, the parents will enter the premises from Pennsylvania Avenue, proceed down the one-way driveway to the lower level of the building, drop off or pick up their children, exit through the driveway at the rear of the site and proceed toward 38th Street.

The applicant's traffic consultant testified that he examined the traffic conditions around the site and finds that the day care center will have no adverse impact on traffic.

In the traffic consultant's view, there will be no significant impact on traffic en route to the site because 75 percent of the vehicles going to the center will have already been on the road en route to work. Only about 25 percent of the trips will be primary purpose trips - i.e. those taken for the sole purpose of going to the center.

The traffic consultant testified that parents will have to use Pennsylvania Avenue to access the site because turns onto 38th Street are prohibited in the early morning hours.

The Penn Branch Citizens Civic Association and area residents maintain that the use of Pennsylvania Avenue to access the site will interfere with traffic travelling west on this street. They testified that cars on Pennsylvania Avenue travel very fast and parents going to the site will have to slow down to turn right into the driveway. This will cause cars following behind to have to slow down unexpectedly, possibly causing accidents with cars on the street.

Addressing this concern, the traffic consultant testified that the entrances to the Penn Branch Shopping Center and a laundromat are located a short distance west of the site. There is also a gas station east of the site at the corner of Pennsylvania and Alabama Avenue. Currently, patrons turn into these establishments from Pennsylvania Avenue without encountering problems. The church's driveway entrance is not unique. Visitors to the church site should not encounter problems because the speed limit in the area is 30 m.p.h. and drivers tend to observe the speed limit. Furthermore, there are traffic lights along Pennsylvania Avenue that create gaps between cars travelling along the street. This space allows for turns into the church lot to occur without disrupting the flow of traffic.

Opponents also testified that cars leaving the church property will often need to make a left-hand turn onto Pennsylvania Avenue across west-bound traffic. They maintain that several cars trying to make this turn between 5:00 and 6:00 in the evening will have an adverse impact on traffic.

The traffic consultant testified that drivers east-bound on Pennsylvania Avenue are generally courteous and allow cars existing the church to join the east-bound traffic. Therefore there are no real problems in this area. He also pointed out that the parents will pick up their children over a more expanded time range of 3:30 p.m. to 6:00 p.m. rather than 5:00 p.m. to 6:00 p.m. as suggested by the opponents.

Entrance and Exit:

Advisory Neighborhood Commission (ANC) 7B, by letter dated July 14, 1993, indicated that it does not support the application for a number of reasons. One of the reasons stated was the inability of cars to enter and exit the site in a safe manner. The Penn Branch Citizens Civic Association expressed the same concern. The association testified that to enter the lot requires a sharp turn because the entrance is at a 90 degree angle, the driveway has a very steep slope, and there are no guardrails on the sides. There are water problems in the area and the driveway is very dangerous when it is icy. Opponents are concerned that the physical conditions of the driveway and adverse weather conditions could cause accidents at the site.

The applicant testified that currently, the entrance measures 16 feet wide. The driveway ramp is about 100 feet long 12 feet wide, with an average slope of 17 percent. The applicant proposed to widen the entrance apron to 20 feet, widen the driveway to 16 feet, and extend the driveway thereby reducing the slope to 14.6 percent. The applicant also proposed to erect a guardrail on the west side of the ramp where the land slopes steeply. The guardrail would comply with the requirements of the highway department.

The opponents testified that in expanding the apron, they should not harm the trees to the west. They pointed out that there is a utility pole to the east which limits widening in that direction.

The opponents testified that the guardrail proposed would be too industrial in appearance and would be inappropriate for a residential community.

The opponents noted that persons leaving the site will exit by way of the driveway located to the rear of the property. They maintain that a portion of this driveway belongs to Mr. White, not the church and cannot legitimately be used to exit the church lot. Mr. White owns lot 16 at 3741 S Street, S.E. The rear of his property abuts the rear of the church's lot.

The applicant admits that the driveway designated in the plans encompasses a portion of lot 16. The applicant stated that the church will seek to secure an easement agreement with Mr. White to use the piece of land as part of the driveway.

Parking:

The applicant testified that there will be 40 parking spaces on site for use by those associated with the day care center. The applicant testified that 40 spaces are adequate to meet the needs of the proposed facility.

The PBCCA testified that often people will park on 38th Street rather than on the church parking lot. The association believes that they do not use the lot because it is too dangerous to access.

8. In addition to the concerns raised about the application, the PBCCA pointed out that there is no demand in the Penn Branch area for the proposed day care center because there are many others located nearby that serve the community. The association noted that Penn Branch residents are mostly older adults, making a new day care center unnecessary. The association is of the view that the center should serve the immediate community, not residents of the Maryland suburbs who come into the city to use the facility.

The applicant stated that many members of the church's congregation are former District of Columbia residents who have moved to Maryland but have retained their ties with the church. The applicant stated that members of the congregation have expressed an interest in using the day care center, and allowing them access to the facility will not adversely impact the neighborhood.

The applicant further stated that it has studied the Ward 7 community and found there to be a need for the facility.

9. By report dated July 14, 1993, the Office of Planning (OP) recommended conditional approval of the application. OP commented on the proposed use of the facility. OP pointed out that the center's morning drop off and evening pick up location would be in the parking area which is located on the western portion of the property. Parents will escort the children from vehicles to the entrance on the west side of the building at which point staff will accompany them into the facility. In the evening, parents will pick the children up inside the center.

OP also noted that the applicant has designated a play area located on the eastern portion of the property adjacent to 38th Street. To the north, the play area abuts an existing parsonage owned by the church. The play area is accessed from the second floor of the addition through a side door. The applicant has made arrangements to convert the existing grassy area into a suitable playground and to install equipment appropriate to the age range of the children. The play area would be used exclusively by the center and is currently enclosed by a chain link fence on three sides. Outdoor play hours will be staggered so that only some of the children will be outdoors at any one time.

OP stated that the on-site parking area accommodates 40 vehicles and is accessible from Pennsylvania Avenue from a concrete drive. A large trash container will be located at the northwest

corner of the parking area. Trash will be picked up twice a week. The applicant stated that all open areas will be kept clean and free of refuse and debris at all times.

OP stated that according to the Service Facility Regulation Administration, Department of Consumer and Regulatory Affairs, the proposed facility could accommodate up to 80 children. OP noted that there are no child development centers located in the subject square or within 1,000 feet of the proposed child development center.

In the opinion of the Office of Planning, the proposed facility would be large enough to accommodate the proposed use. The Office of Planning also believes that adequate accommodations and measures are proposed with regard to the play area, play apparatus, and child drop off and pick up arrangements. Since the hours of outdoor play would be staggered and the play area is not located adjacent to neighboring properties, the facility should not have an adverse impact on surrounding properties in terms of noise. Based on the preceding analysis, the Office of Planning believes that the subject child development center would not adversely impact neighboring properties, nor would it impair the intent and purpose of the Zoning Regulations and Map. However, the Office of Planning is of the opinion that the existing chain link fence should be replaced with an eight-foot high stockade fence to provide a more effective visual and audio separation of the play area from the properties located across 38th Street to the east and the adjoining property to the northeast. OP's approval is conditioned upon the erection of a stockade fence enclosing the play area:

10. The Office of Planning referred this application to the following District government agencies for review and comment:

- A. Department of Public Works;
- B. Department of Fire and Emergency Medical Services;
- C. Metropolitan Police Department; and
- D. Department of Housing and Community Development.

11. By memorandum dated July 16, 1993, the Department of Public Works (DPW) noted the proposed use of the site. DPW stated that the proposed center's entrance abuts the church's parking lot which can be accessed via Pennsylvania Avenue and 38th Street. The church's parking lot has 40 automobile parking spaces. Title 11 DCMR Section 2101.1 requires the applicant to provide four (4) automobile parking spaces. In addition, the applicant has a 21-passenger bus which will be available for the center's use.

Pennsylvania Avenue S.E. is a four-lane principal arterial. Parking along the northern curb lane is prohibited weekdays 7:00 a.m. to 9:30 a.m. and along the southern curb lane 4:00 p.m. to

6:30 p.m. Thirty-eighth Street S.E. is a two-lane local neighborhood street. Traffic along 38th Street is restricted to a southbound direction between S Street and Pennsylvania Avenue from 7:00 a.m. to 9:30 a.m. Other streets in the vicinity are local streets. The driveway connecting the parking lot and Pennsylvania Avenue is 12 feet wide and approximately 35 feet in length.

According to DPW, the applicant stated that the majority of vehicles traveling to and departing from the center are likely to follow the peak hour directional flow of traffic on Pennsylvania Avenue. DPW stated that this will result in a major traffic pattern of vehicles entering the facility via the 12-foot wide driveway on Pennsylvania Avenue and departing via 38th Street. Any vehicles traveling in the opposite direction of the major traffic flow will have the option of turning left either at the Pennsylvania Avenue driveway or at Texas Avenue (located west of the driveway) and then proceed to 38th Street.

DPW stated that day care centers generate approximately 0.3 vehicle trips per student. This center is projected to have a maximum of 80 students. Therefore, it is projected that the center will attract approximately 24 new vehicle trips during the peak activity period. This number will be reduced considering that the church is planning to provide bus service.

DPW has determined that based on the existing traffic situation, the proposed on-site parking facility, as well as the projected trip generation of the center, the proposed day care center can be accommodated with no appreciable adverse impact on the neighborhood roadway network. However, DPW recommends that the 12-foot wide driveway be widened to 16 feet and improved to facilitate bus transportation.

12. By memorandum dated August 9, 1993, the Fire Department stated that it has no objection to the request. The Fire Department noted that fire and life safety features required by the city's codes (such as fire alarms and extinguishers, sprinkler systems, standpipe systems, exits, and fire rated separations, etc.) will be determined during the review for certification.

13. By letter dated July 20, 1993, Councilmember Kevin Chavous emphasized the opposition expressed by the ANC and the neighborhood civic association. Based on this opposition he expressed the view that the community's best interest would not be served by granting this application. Therefore, he urged the Board to deny the proposed use.

14. Three letters in support of the application were submitted into the record; however, no persons or parties appeared at the hearing to testify in support of the application.

15. Several letters in opposition to the application were submitted into the record.

Issues:

The following issues were raised by this application.

1. Whether opening a day care center at the subject site will greatly increase traffic in the vicinity of the site.

2. Whether the use of the new facility will interfere with traffic westbound on Pennsylvania Avenue.

3. Whether persons exiting from 38th Street onto Pennsylvania Avenue will have difficulty entering the flow of traffic eastbound on Pennsylvania Avenue.

4. Whether the site can be accessed from Pennsylvania Avenue in a safe manner, given the slope of the driveway and the narrowness of the entrance from the street.

5. Whether the industrial guardrail proposed would be appropriate for a residential district.

6. Whether the entrance to the driveway can be expanded without damage to the tree on the west side.

7. Whether parking will spill over into the neighboring streets.

8. Whether the play area is large enough to meet space requirements.

9. Whether the sounds from children playing will be disturbing to nearby residents.

10. Whether the church owns the property for the driveway used to exit the site.

11. Whether the demand for child care in the area is sufficient to justify locating the facility at the site.

FINDINGS OF FACT:

Based on the evidence of record the Board finds as follows:

1. The increase in traffic, due to use of the facility, will likely be minimal because most parents will drop their children off on their way to work.

2. The traffic light located near the site and the 30-mile per hour speed limit on Pennsylvania Avenue will help to prevent the cars entering the subject property from interrupting the flow of traffic westbound on Pennsylvania Avenue.

3. Drivers traveling eastbound on Pennsylvania Avenue in the evening are generally courteous and allow cars to enter the flow of traffic from 38th Street.

4. By reducing the slope of the driveway and expanding the entrance apron, the applicant will make it safer to access the site.

5. The applicant will be required to install a guardrail that is appropriate for a residential community.

6. The applicant will provide 40 parking spaces on the site for use by the eight staff members and visitors.

7. The Board is without the authority to prevent parking on nearby public streets.

8. The proposed drop off/pick up area is located entirely on the church's property and is safe for the children.

9. The stockade fence to be erected between the site and adjoining properties to the north will minimize the impact of noise from the play area.

10. A portion of the driveway at the rear of the site is owned by an adjacent property owner. The church plans to execute an easement with the property owner to allow the church to use the piece of land for the driveway.

11. The lack of demand for the facility is not an issue properly before the Board. The applicant has a right to establish a child development center on the site with the Board's approval.

12. The applicant will meet all code and licensing requirements applicable to the proposed use.

13. There is no other child development center in Square 5528 or within 1,000 feet of the site.

CONCLUSIONS OF LAW AND OPINION:

Based on the evidence of record, the Board concludes that the applicant is seeking a special exception to establish a child development center in an R-1-B district. The granting of a special exception requires a showing through substantial evidence that the relief can be granted as being in harmony with the general purpose

and intent of the Zoning Regulations, and that it will not adversely affect the use of neighboring property. The applicant must also meet the requirements of 11 DCMR 205 regulating child development centers.

The Board concludes that the applicant has met the burden of proof. The Board concludes that the center is capable of meeting all applicable code and licensing requirements. With the expansion of the entrance and driveway, the Board is of the opinion that the location and design of the center will not create objectionable traffic conditions or unsafe conditions for picking up or dropping off children.

The Board concludes that the 40 parking spaces provided at the site will be sufficient to meet the reasonable needs of teachers, other employees, and visitors.

The Board concludes that the stockade fence to be erected at the rear of the property will buffer adjacent and nearby properties from objectionable impacts due to noise, activity or other objectionable conditions.

The Board is of the opinion that the application is in harmony with the general purpose and intent of the Zoning Regulations and that the use will not tend to adversely affect the use of neighboring property.

The Board concludes that it has accorded ANC 7B the "great weight" to which it is entitled. In light of the foregoing, the Board concludes that the application is hereby **GRANTED, SUBJECT** to the following **CONDITIONS**:

1. Approval shall be for a period of **THREE YEARS**.
2. The number of children shall not exceed 80. The number of staff shall not exceed eight.
3. The hours of operation shall be between 6:00 a.m. and 7:00 p.m., Monday through Friday.
4. The applicant shall provide 40 on-site parking spaces.
5. Outdoor play time shall be staggered so that all the children shall not be in the play area at one time.
6. The applicant shall make every effort to preserve existing mature trees on the west side of the entrance ramp, including, but not limited to the use of tree wells.

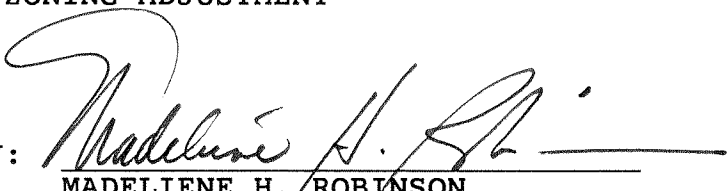
7. Drop off and pick up of children shall occur at the basement level of the new addition. Access to the site shall be via a one-way driveway accessed by the ramp from Pennsylvania Avenue and exiting onto 38th Street.
8. Prior to the issuance of the certificate of occupancy for the use, the applicant shall present to the Zoning Administrator an executed easement demonstrating that the applicant has right-of-way over the triangular portion of the driveway located on Lot 16 in Square 5528.
9. Prior to the issuance of the certificate of occupancy, the applicant shall submit to the Board for its review and approval, a landscaping plan demonstrating its efforts to screen the guardrail along the east side of the Pennsylvania Avenue access, to protect existing trees, and to prevent soil erosion. Prior to the submission of such landscape plan to the Board, the applicant shall seek appropriate review of such plan from the Department of Public Works with respect to the proposed plantings in the public space between the applicant's property and Pennsylvania Avenue.
10. Prior to the issuance of the certificate of occupancy, the applicant shall submit a plan detailing the play area to be used and the type of fencing proposed for the property line along 38th Street for the Board's review and approval. In addition, the applicant shall present the plans for the play area to the D.C. Department of Consumer and Regulatory Affairs to ensure that the proposed space meets the minimum required area per child for the proposed use.
11. The applicant shall maintain all landscaping on the site in a neat and healthy growing condition and shall keep the property free of refuse and debris at all times. Any outdoor trash storage containers shall be screened from view by fencing or landscaping.
12. The applicant shall establish and maintain a community liaison program consisting of representatives of the facility, the ANC, and the neighborhood. The applicant shall conduct meetings of the community liaison members at least four times a year. Notice of the meetings shall be given to the ANC and the owners of all property within 200 feet of the site. The applicant shall be responsible for keeping minutes of all meetings and providing quarterly reports of its activities. The applicant shall file copies of all minutes and quarterly reports with the Board at the time of filing an application for continuance of the special exception relief.

BZA APPLICATION NO. 15838
PAGE NO. 14

VOTE: 4-0 (Craig Ellis, Maybelle Taylor Bennett, George Evans and Angel F. Clarens to grant; Laura M. Richards not voting, having recused herself).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


MADELIENE H. ROBINSON
Director

FINAL DATE OF ORDER: _____

JUN 3 1994

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

15838Order/TWR/bhs

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 15838

As Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on JUN - 3 1994 a copy of the order entered on that date in this matter was mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

John Leslie, Jr., Pastor
6311 13th Street, N.W.
Washington, D.C. 20011

Houston Brown
9403 Loughran Road
Ft. Washington, MD 20744

Marvin P. Mitchell
Robert Nash
FAIA & Associates, P.C.
6448 Bock Road
Oxon Hill, MD 20745

Cullen Elias
5036 38th Avenue, #B1
Hyattsville, MD 20782

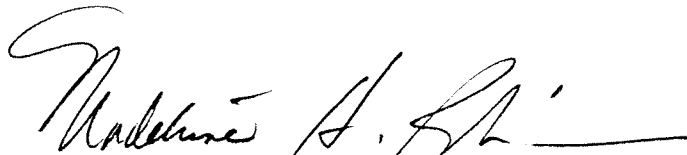
Gloria Belton
1846 Village Green Drive
Landover, MD 20785

Floyd White
3741 S Street, S.E.
Washington, D.C. 20020

Con Hitchcock
2000 P Street, N.W., #700
Washington, D.C. 20036

Howard Green, Sr.
3737 S Street, S.E.
Washington, D.C. 20020

Herbert Boyd, Jr., Chairperson
Advisory Neighborhood Commission 7B
3200 S Street, S.E.
Washington, D.C. 20020


MADELIENE H. ROBINSON
Director

DATE: JUN - 3 1994

15838Att/bhs

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 15838 of the Church of Jesus Christ, pursuant to 11 DCMR 3108.1, for a special exception under Section 205 to establish a child development center of 80 children and three staff persons in an R-1-B District at premises 3456 Pennsylvania Avenue, S.E. (Square 5528, Lot 814).

HEARING DATES: July 21, September 22, October 13 and December 1, 1993

DECISION DATE: December 22, 1993

DISPOSITION: The Board GRANTED the application with CONDITIONS by a vote of 4-0 (Craig Ellis, Maybelle Taylor Bennett, George Evans, and Angel F. Clarens to grant; Laura M. Richards not voting, having recused herself).

MODIFICATION ORDER

The Board granted the application subject to twelve conditions by its Order dated June 3, 1994. Condition Nos. 8, 9 and 10 of the order read as follows:

8. Prior to the issuance of the certificate of occupancy for the use, the applicant shall present to the Zoning Administrator an executed easement demonstrating that the applicant has right-of-way over the triangular portion of the driveway located on Lot 16 in Square 5528.
9. Prior to the issuance of the certificate of occupancy, the applicant shall submit to the Board for its review and approval, a landscaping plan demonstrating its efforts to screen the guardrail along the east side of the Pennsylvania Avenue access, to protect existing trees, and to prevent soil erosion. Prior to the submission of such landscape plan to the Board, the applicant shall seek appropriate review of such plan from the Department of Public Works with respect to the proposed plantings in the public space between the applicant's property and Pennsylvania Avenue.
10. Prior to the issuance of the certificate of occupancy, the applicant shall submit a plan detailing the play area to be used and the type of fencing proposed for the property line along 38th Street for the Board's review and approval. In addition, the applicant shall present the plans for the play area to the D.C. Department of

Consumer and Regulatory Affairs to ensure that the proposed space meets the minimum required area per child for the proposed use.

By submission dated June 16, 1994, the applicant's representative requested that the Board reconsider Condition No. 8 and provided plans and correspondence to demonstrate compliance with Condition Nos. 9 and 10.

With respect to Condition No. 8, the applicant's representative advised the Board that attempts to enter into an easement with the adjacent property owner regarding the applicant's right-of-way over the triangular portion of the driveway located on Lot 16 in Square 5528, have not been successful. The applicant's representative noted that 11 DCMR 2117.8(c)(2) provides that the minimum width of a driveway which provides access to required parking spaces shall be not less than twelve feet if designed for one-way circulation. The narrowest portion of the applicant's rear driveway is in excess of thirteen feet. By memorandum to the Zoning Administrator dated June 8, 1994, the District of Columbia Department of Public Works indicated that the proposed driveway aisle width complies with the requirements of 11 DCMR 2117.8(c)(2) and that Condition No. 8 of the Board's order is therefore, not warranted.

With respect to Condition No. 9, the applicant's representative submitted a site plan demonstrating the applicant's efforts to landscape the site, to screen the guardrail, to protect existing trees, and prevent soil erosion. By memorandum dated March 25, 1994, the Public Space Permits and Records Branch of the D.C. Department of Public Works offered no objection to the proposed site plan. DPW suggested that the guard rail be set back ten feet from the sidewalk to the bottom of the driveway ramp because of the sharp change in grade of the site.

With respect to Condition No. 10, the applicant's representative submitted a site plan showing the location of the play area, including the public space located within the existing chain link fence along 38th Street. The Service Facility Regulation Administration of the D.C. Department of Consumer and Regulatory Affairs, by its pre-inspection survey dated August 13, 1994, indicated that the applicant met the requirements for outside play space for 83 children. The applicant's representative requested that the Board permit the retention of the existing chain link fence which is located on public space along 38th Street. The Public Space Permits and Records Branch of the D.C. Department of Public Works, by memorandum dated March 25, 1994, indicated the existing chain link fence could not be replaced with a solid masonry wall. The DPW noted that the only type of wall permitted on public space is a retaining wall designed to retain earth. The DPW noted that the existing fence could be replaced with an open

design fence of wood or wrought iron restricted to a height of 42 inches. The DPW noted that the applicant could seek approval of a fence up to seven feet in height provided it has a 50 percent open design subject to variance approval from the Advisory Neighborhood Commission and the D.C. Public Space Committee. No fencing along the applicant's property line, which bisects the proposed play area, was proposed.

There was no response to the applicant's motion for modification.

Upon consideration of the motion, the record in the application and its final order, the Board concludes, with respect to Condition No. 8 that the applicant meets the minimum width requirements for the proposed one-way driveway and, therefore, the easement with the adjoining property owner is not required. The Board further concludes that the proposed landscaping plan is adequate to meet its concerns with respect to screening the guardrail, protection of existing trees, and soil erosion as required by Condition No. 9. With respect to Condition No. 10, the Board concludes that the applicant's submission does not adequately address its concerns. The applicant's submission offers the retention of the existing chain link in the public space along 38th Street because a solid brick wall would not be allowed in public space except if necessary to retain earth. The applicant failed to address whether it considered other types of fences which would be permitted in the public space area or if appropriate fencing could be located along its property line. The applicant also failed to demonstrate to the Board whether the required minimum play area per child can be accommodated on its own property without the use of public space.

For the foregoing reasons, the Board hereby **ORDERS** that the motion for **MODIFICATION** is **GRANTED**, in part. The Order of the Board dated June 3, 1994, is hereby amended, as follows:

- a. Condition No. 8 shall be deleted.
- b. Condition No. 9 shall be modified to read as follows:
 9. The applicant shall provide appropriate landscaping as shown on the plan marked as Exhibit No. 64-A of the record, to screen the guardrail along the east side of the Pennsylvania Avenue access, to protect existing trees, and to prevent soil erosion.
- c. Condition Nos. 9 through 12 shall be renumbered to reflect the deletion of Condition No. 8.

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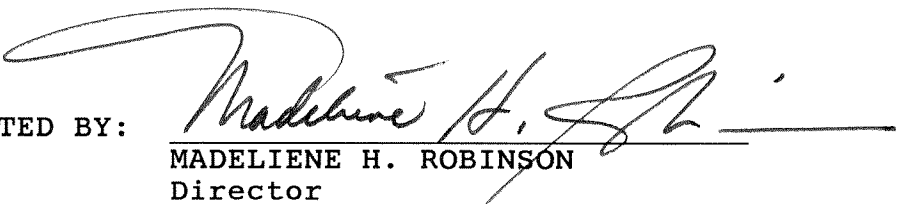
In all other respects, the Order of the Board dated June 3, 1994 shall remain in full force and effect.

DECISION DATE: July 6, 1994

VOTE: 4-0 (Angel F. Clarens, Craig Ellis, George Evans and Maybelle Taylor Bennett to grant, in part; Laura M. Richards not voting, having recused herself).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


MADELIENE H. ROBINSON
Director

FINAL DATE OF ORDER: JUL 14 1994

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

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15838Ord/SS/LJP

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 15838

As Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on JUL 14 1991 a copy of the order entered on that date in this matter was mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

John Leslie, Jr., Pastor
6311 13th Street, N.W.
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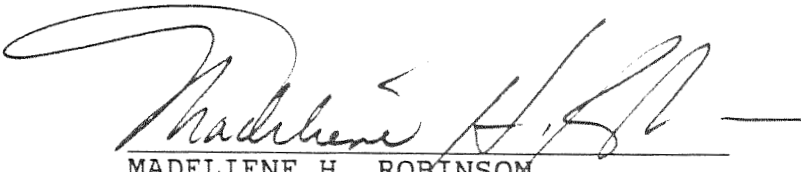
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Washington, D.C. 20020

Herbert Boyd, Jr., Chairperson
Advisory Neighborhood Commission 7-B
3200 S Street, S.E.
Washington, D.C. 20020


MADELIENE H. ROBINSON
Director

DATE: JUL 14 1991